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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,308	10/20/2003	Kate E. Nordland	86012-34800-USPT	2871
28763	7590	01/25/2006	EXAMINER	
WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006			BRADEN, SHAWN M	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/689,308	<b>Applicant(s)</b> NORDLAND ET AL.	
	<b>Examiner</b> Shawn M. Braden	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 and 64-79 is/are pending in the application.  
     4a) Of the above claim(s) 40-63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 and 64-79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>07/06/2004</u> <i>NTM</i>   | 6) <input type="checkbox"/> Other: ____.                                    |

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**DETAILED ACTION**

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***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-39 & 64-79, drawn to a polymeric container with handle, classified in class 220, subclass 756.
  - II. Claims 41-63, drawn to a process of forming the container, classified in class 425
2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as simultaneously folding the first and second major flaps and the first and second minor flaps upwardly and inwardly.
3. During a telephone conversation with Steve Kenney on 01/12/2006 a provisional election was made without traverse to prosecute the invention of Polymeric Containers with Handle, claims 1-40 and 64-79. Affirmation of this election must be made by applicant in replying to this Office action. Claims 41-63 are withdrawn from further

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consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8,11-14,17-32,34-38,40 & 64-67,69-75,77-79 Are rejected under 35 U.S.C. 103(a) as being unpatentable over Oman (USPN 2,001,810) in view of Buchalski (USPN 5,816,484).

With respect to claims 1,15,29,35,64,72 Oman discloses the invention substantially as claimed. However, Oman does not disclose a polymeric container that is integrally formed, non-foldable, continuous body portion with a rim encompassing and projecting laterally outwardly from the continuous body portion.

Buchalski teaches a one piece polymeric container that is integrally formed for the purpose of cheaper construction than cardboard (col. 1 l.47) and also a one piece polymeric container does not allow food to leak through the container when stored for a substantial period of time (col. 1 ln. 53). Buchalski further teaches a analogous container with a continuous body portion with a rim (89) encompassing and projecting laterally outwardly from the continuous body portion for the purpose of improved stacking the edge or step precludes wedge jamming of the nested containers (col. 5 ln. 39-45).

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Therefor it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the structure of Oman with the teachings of one piece polymeric container that is integrally formed and a rim encompassing and projecting laterally outwardly from the continuous body portion in order to cut cost, improve moisture resistance and to improve stack ability.

Also, Tang (USPN 5,685,478) also teaches a well known folded cardboard container and changing the construction to a one piece polymeric container that is integrally formed for the purpose of saving material, making washable, microwaveable and recyclable (col. 1 ln. 58 – col. 2 ln. 11)

6. With respect to claims 2,3 Oman as applied above shows handle openings in the major flaps 44. Oman discloses the claimed invention except for openable handle portions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have openable handle portions since the Examiner takes Official Notice of the equivalence of open able handle and handle openings for their use in the art and the selection of any of these known equivalents to handle openings. Examiner also takes official notice that it is well known in the art of thermoforming that popable holes are common.

7. With respect to claims 4,5,19,20 Oman as applied above shows an opening on the first minor flap (46) for securing and the same opening (47) on the second minor flap.

8. With respect to claims 6,7,21,22 Oman as applied above shows that both major flaps have securing portions composed of outward protrusions or hooks (55,56,57,58).

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9. With respect to claims 8,23,67,75 Oman as applied above shows the same fifth and sixth fold as applicant describes (fig 1).

10. With respect to claims 11,26 Oman as applied above shows a rectangularly shaped container (fig.1).

11. With respect to claim 12 Buchalski as applied above shows a continuous rim (89)

12. With respect to claims 13,14,27,28,34,40,69,77 Buchalski as applied above discloses the claimed invention except for the thickness of the container. It would have been an obvious matter of design choice to determine the thickness of the container, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

13. With respect to claim 16 Oman as applied above shows a continuous sidewall (fig.1)

14. With respect to claims 17,18,31,32,37,38,65,66,73,74 Oman as applied above shows handle openings (42,43) in the major flaps that are adapted to form a handle when the container is closed. Oman discloses the claimed invention except for openable handle portions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have openable handle portions since the Examiner takes Official Notice of the equivalence of open able handle and handle openings for their use in the art and the selection of any of these known equivalents to handle openings.

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15. With respect to claims 30,36,70,71,78,79 Oman as applied above shows the first 38 and second 39 minor flaps are substantially identical and that the first 58 and second 60 major flaps are substantially identical (fig.1).

16. Claims 9,10,33,39,68,76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oman (USPN 2,001,810) and Buchalski (USPN 5,816,484) as applied to claim 1 above, and further in view of Suh (USPN 5,106,882). Oman and Buchalski as applied to claim 1 teaches substantially as claimed. However, Oman and Buchalski do not specifically disclose the material, from which the container is made is alkenyl aromatic polymer foam.

Suh teaches a foam insulation material that is dimensionally stable (col. 1 ln.1-15). Suh's teachings are used in the field of endeavor, insulation.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container of Suh's material of insulating alkenyl aromatic polymer foam in order to have an insulating container with accurate dimensions so the walls and flaps aligned and fit together accurately.

17. Applicant is advised that should claim 1 be found allowable, claims 15,29,35,64,72 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawn M. Braden whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMB

  
**JES F. PASCUA**  
**PRIMARY EXAMINER**